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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|--------------------------|---------------------|-----------------------------|
| 09/645,866 | 08/24/2000 | Kenneth A. Lauffenburger | 020533.0238 | 4021 |
| 7590 | 07/26/2005 | | | EXAMINER HARPER, KEVIN C |
| Baker Botts LLP 2001 Ross Avenue Dallas, TX 75201-2980 | | | ART UNIT 2666 | PAPER NUMBER |

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|-----------------------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/645,866 | LAUFFENBURGER ET AL. <i>fm</i> | |
| | Examiner | Art Unit | |
| | Kevin C. Harper | 2666 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-5, 7-18,20,21,23-31,33,34 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1,3-5,7-18,20,21 and 23-26 is/are allowed.
- 6) Claim(s) 27,28,31,33 and 36 is/are rejected.
- 7) Claim(s) 29,30,34 and 37-39 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments filed February 18, 2005 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground of rejection is made in view of Balakrishnan et al. in view of Sriram.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 27-28, 31, 33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balakrishnan et al. ("The Effects of Asymmetry on TCP Performance") in view of Sriram (US 5,463,620).

1. Regarding claims 27-28 and 36, Balakrishnan discloses a system (fig. 2, router) for packet transmission in a communications network having asymmetrical connections (page 77, Introduction, 2nd para.) comprising an inherent communications manager and memory to receive TCP packets, determine if a packet is a bypass packet or non-bypass packet, and transmit the several bypass packets toward a communication link between two non-bypass packets (page 82, Scheduling Data and Acknowledgments, 1st para, line 5 through the 2nd para., line 4; note: ACK-first scheduling). However, Balakrishnan does not disclose transmitting a maximum number of bypass packets between communication of two non-bypass packets. Sriram discloses transmitting a maximum number of packets during a scheduling operation, where packets are queued separately. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to limit the number of bypass packet transmitted in the invention of

Balakrishnan in order to prevent starvation or excess delay of non-bypass packets (Sriram, col. 1, lines 45-46 and 53-56).

2. Regarding claims 31 and 33, the determined content of the TCP packet is an ACK or data (page 82, Scheduling Data and Acks, 2nd para., lines 2-4).

Allowable Subject Matter

3. Claims 1, 3-5, 7-18, 20-21 and 23-26 are allowed.
4. Claims 29-30, 34 and 37-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 571-272-3166. The examiner can normally be reached weekdays from 11:00 AM to 7:00 PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema S. Rao, can be reached at 571-272-3174. The centralized fax number for the Patent Office is 571-273-8300. For non-official communications, the examiner's personal fax number is 571-273-3166 and the examiner's e-mail address is kevin.harper@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications associated with a customer number is available through Private PAIR only. For more information about the PAIR system, see portal.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin C. Harper

July 23, 2005